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**Contract—Literary Work—Publisher and Author—Obligation to Publish.**—*Morang v. Le Sueur*, Supreme Court of Dominion of Canada—In 1901 M. & Co., publishers of Toronto, and L., an author in Ottawa, signed an agreement by which L. undertook to write the life of the Count de Frontenac for a work entitled "Makers of Canada" in course of publication by M. & Co.; the latter agreed to publish the work and pay L. \$500 on publication and a like sum when the second edition was issued. This contract was carried out and the publishers then proposed that L. should write, on the same terms, the life of Sir John A. MacDonald, for which that of William Lyon Mackenzie was substituted. L. prepared the latter work and forwarded the manuscript to the publishers, who refused to publish it as being unsuitable to be included in the "Makers of Canada." L. then tendered to M. & Co. the amount paid him in advance for his own work and demanded a return of the manuscript, which was refused, M. & Co. claiming it as their property. In an action by L. for possession of his manuscript,

Held, affirming the judgment of the Court of Appeal (20 O. L. R. 594), Idington and Anglin, JJ., dissenting, that he was entitled to its return.

Held, per Fitzpatrick, C. J., that the property in the manuscript (or what is termed literary property) has a special character distinct from that of other articles of commerce; that the contract between the parties must be interpreted with regard to such special character of the subject-matter; that it implies an agreement to publish if accepted; and when rejected the author was entitled to treat the contract as rescinded and to a return of his property.

Held, per Davies and Duff, JJ., that there was an express contract for publication on breach of which the manuscript should be returned.

Held, per Duff, J., that the publishers could be treated as trustees of the manuscript for publication and that purpose failing there was a resulting trust in favour of the author.

Appeal dismissed with costs.

Hellmuth, K. C., for appellants. Lafleur, K. C., for respondent.—Canada Law Journal (Jan., 1912).

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**Negligence—Motor Vehicle—Duty of Driver with Regard to Pedestrians—Damages—Costs—Recovery of Amount within Jurisdiction of the County Court—King's Bench Act, Rule 933.**—*Rose v. Clark*, Court of King's Bench, Province of Manitoba—The plaintiff, when on his way to board a street car which had stopped at a switch point at a place where it was usual for passengers to get on the cars, was knocked down and injured by a motor vehicle driven by the defendant's chauffeur past the street car. It appeared that the chauffeur was driving at a moderate rate of speed on the proper

side of the road behind a team going in the same direction; that the team, when just opposite the street car, turned to the right to avoid hitting the plaintiff, that the chauffeur then proceeded, thinking the road was clear, when suddenly the plaintiff appeared before him on the pavement, that he blew his horn and applied the brakes and did all he could to avoid hitting the plaintiff, but that the latter appeared confused, took a step backward and was struck, although not run over.

Held, 1. The circumstances and the situation were such as to require the chauffeur to exercise a more than ordinary degree of care for the safety of pedestrians and to anticipate the possibility of being confronted at any time in such a situation by pedestrians who for the moment lose control of their mental faculties, and are overcome by a sudden panic, although at other times of healthy and rational intellect, and that under the circumstances the chauffeur was guilty of such negligence that the defendants were liable for the damages suffered by the plaintiff.

2. The trial judge assessed the plaintiff's damages at \$344, an amount within the jurisdiction of the County Court; but, being satisfied that the plaintiff's solicitor honestly believed that the plaintiff would recover an amount beyond that jurisdiction, while giving him no costs, he gave the statutory certificate, under Rule 933 of the King's Bench Act, to prevent the defendant setting off any costs.

Howell, for plaintiff. Anderson, K. C., for defendants.—Canada Law Journal (Jan., 1912).

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**Quieting Title—Pleading—Possession of Plaintiff.**—In the West Virginia case of *Mustard v. Big Creek Development Co.* (Supreme Court of Appeals of West Virginia, Nov. 14, 1911), 72 S. E. 1021, it was held that a bill to remove a cloud, by one claiming under a deed subsequent in date to that of a lease for oil and gas, covering the same land, and under which defendant claims, but alleging superior equitable title under a contract or title bond, prior in date to such lease, presents a good case, on demurrer, for equitable cognizance, regardless of the question of actual possession by complainant.

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**Frauds, Statute of—Sufficiency.**—And in the same case it was held that if an agent verbally authorized to lease land, execute a lease thereon, such lease, if not good under the statute of frauds, as the deed of his principal, will be treated as a good memorandum or contract for a lease, binding the principal, and the statute of frauds is no defense to the rights of such lessee under the contract. *Mustard v. Big Creek, etc., Co.* (W. Va.), 72 S. W. 1021.